

**Advisory Task Force on Remote Access to and Privacy of Electronic Court Records**

**<http://www.in.gov/judiciary/admin/3389.htm>**

*Indiana Government Center South, Conference Room A*

*402 West Washington Street*

*Indianapolis, Indiana*

*July 29, 2016*

*12:00 – 2:00 P.M.*

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**MINUTES**

**ATTENDANCE:** *Chair (designee):* Hon. Steven H. David. *Members:* Joel Schumm, Stephen Key, Gary Secrest, Kenneth Falk, Christine Hayes Hickey, Clerk Debra Walker, Clerk Christa Coffey, Mary Willis, Jon Laramore. *Staff:* Justin Forkner. *Absent:* Hon. Loretta H. Rush, Melissa Avery, Prof. Fred Cate, Lilia Judson, Larry Landis, Hon. Peggy Lohorn, Kelly McBride, Rep. Sharon Negele, Rep. David Ober, David Powell.

**MEETING SUMMARY:** The Task Force received demonstrations of the online access functionality for the pilot Commercial Courts programs, the appellate filing system, and an update on statewide e-filing progress. The Task Force then discussed whether public online access to orders and/or filings should be made available for non-confidential case types, whether public online access should be provided to financial information in cases, and what the next steps for the Task Force would likely be.

The following votes and/or action items were taken:

- the Task Force voted to recommend allowing online public access to “final orders/judgments” (i.e., orders/judgments disposing of the case such as judgments of conviction, sentencing orders, dismissal orders, etc.) in Criminal Misdemeanor (CM), Class A Felony (FA), Class B Felony (FB), Class C Felony (FC), Class D Felony (FD), Level 1 Felony (F1), Level 2 Felony (F2), Level 3 Felony (F3), Level 4 Felony (F4), Level 5 Felony (F5), Level 6 Felony (F6), Murder (MR), and Post-Conviction Relief (PC) case types;
- the Task Force voted to recommend allowing online public access to pleadings, filings, and orders denying expungement petitions in XP cases;
- the Task Force voted, with one dissent, to recommend not allowing online public access to “final orders/judgments” in Juvenile Delinquency (JD) cases;
- the Task Force voted to recommend posting certain financial information – payments made in cases – online, subject to a disclaimer statement;
- the Task Force deferred until at least September the question of allowing public online access to final orders/judgments and pleadings/filings in Miscellaneous Criminal (MC) cases, as well as the remaining Civil, Civil Violation, Juvenile, and Other case types.

## **I. Welcome**

The meeting began at 12:01 p.m., with Justice David as chair. Justice David welcomed the Task Force members and a motion to approve the minutes from the June 3 meeting was made, seconded, and approved. Justice David then reviewed the past actions of the Task Force and votes made with respect to particular case types.

## **II. Progress Reports and Demonstrations**

### *A. Commercial Court online functionality demonstration – Mary DePrez*

Mary DePrez gave a demonstration of the online functionality for the pilot Commercial Court docket. Five of the six pilot programs are on Odyssey, and Trial Court Technology has been developing Odyssey events to flag cases as belonging on the Commercial Court dockets. MyCase is also being modified to allow searches specific to those flags. Stephen Key asked about which case types or matters would fall under those Odyssey flags, and Justice David gave a brief explanation of the nature of the Commercial Court project and cases.

### *B. Appellate Motions online functionality demonstration – Mary DePrez/Bob Rath/Greg Pachmayr*

Bob Rath and Greg Pachmayr presented examples of motions posted online in appellate cases. Stephen Key asked if the PDF documents are word-searchable. Bob Rath said the system OCRs the documents when they are uploaded to Odyssey. It should be noted that court e-filing rules require that documents be submitted in searchable PDF format.

### *C. E-Filing update – Mary DePrez*

Mary DePrez presented on the status of e-filing and demonstrated the e-file website. Currently eleven counties are live with e-filing, and letters went out to Odyssey courts showing the 2017 go-live schedule. All prosecutors can also file through a free service provided by the Indiana Prosecuting Attorney's Council. Christine Hayes Hickey complimented the notices being sent out to attorneys concerning e-filing, and asked who should receive any questions or comments about e-filing or the notices. Mary DePrez said that she or Bob Rath would be appropriate contacts. Kathryn Dolan also noted that the Supreme Court's Office of Communication, Education, and Outreach is making posters for court clerks to hang with information on e-filing and go-live dates.

## **III. Issues for Discussion and Recommendation**

### *A. Online access by case type – Justin Forkner*

The Task Force began by discussing final orders/judgments in criminal cases. Stephen Key asked that the members start with the presumption that things

should be open, and argue against that presumption. The Task Force discussed the nature of expungement cases. Kenneth Falk noted that on the online access survey, the majority of members voted in favor of providing online access to those case types. Joel Schumm expressed concern that if a criminal conviction is posted online and then expunged, the underlying case might still be available online and Administrative Rule 9 does not provide that the online information should be confidential. Mary DePrez said that by statute, once a conviction is expunged then everything is taken offline entirely.

Justice David asked the Task Force to take the XP and MC case types out of consideration for the moment, and focus on the remaining criminal case types; also that “final orders/judgments” in those case types to mean a judgment of conviction, sentencing order, dismissal, or other order that disposes of the case. Mary DePrez said that currently, the system does not distinguish between types of orders – only between orders and filings – and that capability would need to be built. The Task Force then voted, 9-0, to recommend allowing online public access to “final orders/judgments” in Criminal Misdemeanor (CM), Class A Felony (FA), Class B Felony (FB), Class C Felony (FC), Class D Felony (FD), Level 1 Felony (F1), Level 2 Felony (F2), Level 3 Felony (F3), Level 4 Felony (F4), Level 5 Felony (F5), Level 6 Felony (F6), Murder (MR), and Post-Conviction Relief (PC) case types.

Stephen Key then recommended to defer discussion of the MC case type because the Supreme Court’s Records Management Committee was looking at whether online access should be provided in those cases as a policy question. Justice David agreed that this case type would be deferred until at least the September 2 meeting.

Justice David then asked for the Task Force to discuss XP cases; though revisiting Administrative Rule 9 might be a good idea, it was worth it for the Task Force to explore the case type. Jon Laramore was satisfied with the process for removing expungement matters as previously described by Mary DePrez. Joel Schumm’s only concern was that not everything might be caught in the expungement, but Stephen Key said that there was never a guarantee to catch everything. Justice David asked if the discussion was the same for pleading/filings in XP cases, and Judge Willis stated that she believed there was still great public value in posting petitions, while in-process, and orders denying petitions.

Jon Laramore moved to recommend providing public online access to orders denying petitions for expungement in XP cases. The Task Force voted, 9-0, in favor of that recommendation. Stephen Key made a similar motion with respect to pleadings and filings in XP cases (up until the point of an expungement being granted). The Task Force voted, 9-0, in favor of that recommendation.

The Task Force then discussed juvenile case types. Mary DePrez noted that juvenile delinquency (JD) cases are not online in MyCase at all, but juvenile paternity (JP) cases are. Joel Schumm pointed out that appellate records make all JD cases confidential at the appellate level – online or otherwise – and suggested

the same approach for trial records here. Stephen Key pointed out that a statutory provision provides tiered public access to JD cases, depending on the number and level of felonies alleged, and believed there was no reason to treat online differently than that paper structure. Judge Willis said the challenge presented by that approach was a burden imposed on courts and clerks, and would like to see the electronic system programmed to track the statute automatically. Justice David said the recommendation could be to pursue that system down the road.

Ken Falk recommended providing no online access at all in JD cases; Stephen Key suggested only final orders for felony JD cases, but Judge Willis noted that “all felonies” was a very broad category. Joel Schumm seconded Ken Falk’s suggestion.

Justice David asked for a vote on Ken Falk’s position. The Task Force voted, 8-1, to not provide public online access to final orders/judgments in JD cases. Stephen Key cast the dissenting vote, preferring to provide online access in a tiered manner (e.g., possibly only to MR and Levels 1 to 4, or 3, felonies).

Judge Willis made an initial recommendation to provide public online access to JP cases, in a manner similar to domestic relations (DR) cases that involve children. The Task Force did not reach this discussion.

#### *B. Financial data to post – Clerk Debra Walker/Clerk Christa Coffey*

Clerk Coffey discussed the posting of financial information online and said there was support for re-posting financial information. Mary DePrez and Bob Rath demonstrated what was presented by Tyler Technologies and on MyCase, and said that Odyssey has the capability to provide secure access for financial information. Christine Hayes Hickey said information related to payments made and balances, if accurate, would be very helpful – and that payments made should be easy to post accurately. Mary DePrez reiterated the difficulties Monroe County experienced when it posted financial information in Odyssey, and showed how Tyler Technology’s older system showed payments made, but the new version of MyCase has no financial information – but that they could start looking at adding that and turning on the old system immediately.

Ken Falk asked if a disclaimer could be added as to accuracy of information, but saw no reason not to post what currently exists. Stephen Key agreed. Clerk Walker asked if the specific payor information could be removed; it adds confusion and isn’t really necessary.

The Task Force voted, 9-0, to recommend posting payments made, with an appropriate disclaimer.

#### *C. “Next steps” for the Task Force*

Justice David discussed the next steps for the Task Force. At the September 2 meeting, the Task Force should be prepared to discuss final orders/judgments in remaining civil cases, then move on to pleadings/filings in civil cases before addressing pleadings/filings in criminal case types. He also noted that September 2 is the last meeting in the Task Force’s initial order, but that the recommendations it makes may be long-term projects requiring eventual reports back to the Task Force. He said that what may be necessary is

to reconvene the Task Force in 2017 along the same time schedule in order to assess the success or issues with the implementation of the recommendations.

Justice David asked the Task Force members to think about the value of the Task Force, their interest in continuing to participate, and any others that might be worth bringing to the table.

Stephen Key asked if implementation would be easier if the Task Force worked through the final orders/judgments first, before implementing pleadings/filings. Mary DePrez said it likely would not necessarily matter, but the challenge she and Bob were working through was making sure trial court judges understood that orders might be going online. Stephen Key said starting with the final orders/judgments this year would be a good sort of pilot/test batch before digging into the pleadings/filings next year; and that might inform the Task Force membership next year.

#### **IV. Issues for Discussion and Recommendation at September 2, 2016, meeting**

#### **V. Adjournment**

The Task Force adjourned at 2:02 p.m.